REMARKS

In view of the above amendments and the following remarks, reconsideration and further examination are respectfully requested.

A. Status of All of the Claims

Below is the status of the claims in this application.

1. Claim(s) pending: 1-16.
2. Claim(s) canceled: none.
3. Claim(s) added: none.
4. Claims withdrawn from consideration but not canceled: none.
5. Claims(s) currently amended: 1.

It is believed that the above-identified amended claims are supported by the application as originally filed. No new subject matter has been added.

B. Allowable Subject Matter

Applicants would like to thank the Examiner for indicating that claims 7-15 are allowed.

C. Comments Regarding Issuance of Multiple Office Actions

The current Office Action was issued on February 23, 2009 and was supplemental to the one issued on February 2, 2009. Pursuant to MPEP § 710.06, Applicants note that the period to respond is based on the February 23, 2009 date.

D. Claims 1-5 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Neel et al. (U.S. Patent No. 6,743,635) in view of Beaty et al. (U.S. Patent No. 6,645,368) and Ohara et al. (U.S. Patent No. 6,193,873). Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Neel in view of Beaty, and in further view of Feldman et al. (U.S. Patent No. 6,592,745).

As amended herein, independent claim 1 specifically recites "measuring a second response to the second test signal to determine sample sufficiency of the dose of the biological fluid". It is respectfully submitted that the above-recited combination of steps is not taught or suggested in the prior art of record.

As the Examiner points out in the current Office Action, claims 1-6 did not previously require that the second test signal is used for measuring sample volume. Office Action, p. 4. In

an effort to move this application towards allowance, Applicants have amended claim 1 to specifically recite that the measured second response to the second test signal is used to determine sample sufficiency of the dose of the biological fluid. Though Beaty may disclose that the adequacy of the sample volume can be determined by applying an AC signal of proper level directly to the measurement electrodes, Beaty does not disclose the application of a second test signal to at least one of a second pair of electrodes as is currently claimed. Further, as explained in Applicants' prior response, one of ordinary skill would not be motivated to combine the Beaty apparatus and method with Neel because, pursuant to the teachings of both references, there would have been no apparent benefit in doing so.

Because no *prima facie* case of obviousness has been established, the rejection of independent claim 1 should be withdrawn. Claims 2-6 and 16 depend on independent claim 1 and therefore include all of the limitations of claim 1. It is therefore respectfully submitted that claims 2-6 and 16 are allowable over the references of record for at least the same reasons set forth above with respect to claim 1. They may also be allowable on their own merit.

E. Conclusion

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion. In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and an early notice of allowance is earnestly solicited.

If after reviewing this amendment the Examiner feels that any issues remain which must be resolved before the application can be passed to issue, the Examiner is invited to contact the undersigned representative by telephone to resolve such issues.

Respectfully submitted,

By: /Troy J. Cole #35102/

Troy J. Cole, Reg. No. 35102
Woodard, Emhardt, Moriarty, McNett & Henry LLP
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
Telephone: (317) 634-3456 Fax: (317) 637-7561
Email: tjcole@uspatent.com